



STATE OF NEVADA
COMMISSION ON ETHICS
<http://ethics.nv.gov>

Wednesday, January 24, 2007
9:00 a.m.

Boardroom of the State of Nevada Gaming Control Board
1919 E. College Parkway
Carson City, Nevada

and via videoconference to:

Boardroom of the State of Nevada Gaming Control Board
Grant Sawyer Building
555 E. Washington Avenue
2nd Floor, Executive Conference Room
Las Vegas, Nevada 89101

MINUTES

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics.
A verbatim transcript of the open session proceedings, prepared by a certified court reporter,
is available for inspection at the Commission offices in Carson City and Las Vegas.

Commission Members Present (in Carson City):
Jim Kosinski, Esq., Chairman; Rick Hsu, Esq.;
Caren Jenkins, Esq.; George Keele, Esq.

Commission Members Present (in Las Vegas):
Mark Hutchison, Esq., Vice Chairman
Randall Capurro; Timothy Cashman;
William Flangas

Commission on Ethics Staff Present (in Carson City):
L. Patrick Hearn, Executive Director
Adriana G. Fralick, Esq., General Counsel
Emily H. Nunez, Office Manager

Commission on Ethics Staff Present (in Las Vegas):
Matt Di Orio, Senior Investigator
Tami DeVries, Research Analyst

Others Present:
James Lopey, Washoe County Assistant Sheriff of Operations

Chairman Kosinski called the meeting to order at 9:00 a.m., Wednesday, December 13, 2006.

Agenda Item 1 – Open session to approve the minutes of the December 13, 2006, and December 22, 2006, Commission meetings

Chairman Kosinski opened the agenda item to approve the minutes of the December 13, 2006, Commission meeting. Commissioners Flangas and Jenkins requested a correction to the minutes. At that time, the meeting was interrupted due to a fire alarm in Las Vegas, and a recess was taken at 9:08 a.m.

The meeting reconvened at 9:26 a.m.

Hearing no other comments regarding the December 13, minutes, Commissioner Jenkins moved to approve the minutes as amended. Commissioner Keele seconded the motion. The motion was put to a vote and passed unanimously.

With regard to the December 22, 2006, minutes, Commissioner Jenkins moved to approve the minutes. Commissioner Keele seconded the motion. The motion was put to a vote and passed unanimously. Chairman Kosinski commented that, in the future, he would like to see more specific language and facts included in the minutes, when they relate to stipulations. The agenda item was closed.

Agenda Item 2 – Open session to approve the minutes of the January 3, 2007, Subcommittee meeting

Chairman Kosinski opened the agenda item. Commissioner Jenkins requested that the word Chairman be removed from her name since she is no longer Chairman of the Commission or the Subcommittee. Commissioner Capurro moved for approval of the minutes as amended. Chairman Kosinski seconded the motion. The motion passed unanimously.

Agenda Item 3 – Request for Opinion 07-01A

Open session to hear testimony, receive evidence, deliberate, and render an opinion relating to an Advisory Opinion Request submitted by Terry Care, Nevada State Senator, pursuant to NRS 281.511(1). (Confidentiality waived)

Chairman Kosinski noted for the record that this agenda item was withdrawn and, therefore, the agenda item was closed.

Agenda Item 4 – Request for Opinion 06-76

Closed session to hear testimony, receive evidence, deliberate, and render an opinion relating to a confidential Advisory Opinion Request submitted pursuant to NRS 281.511(1).

Chairman Kosinski noted for the record that this agenda item was withdrawn and, therefore, the agenda item was closed.

Agenda Item 5 – Request for Opinion 06-78

Open session to hear testimony, receive evidence, deliberate, and render an opinion relating to an Advisory Opinion Request submitted by James Lopey, pursuant to NRS 281.511(1).
(Confidentiality waived)

Chairman Kosinski opened the agenda item, and asked Executive Director, Pat Hearn, to provide an overview of the request for opinion. Mr. Hearn read a statement of facts including that Mr. Lopey is the Washoe County Assistant Sheriff of Operations, and in his current capacity, Mr. Lopey serves as the Washoe County Homeland Security Director. He also represents Washoe County as a member of the Statewide Homeland Security Grant Subcommittee. The purpose of the Subcommittee was to develop investment justifications for the entire state. Mr. Lopey helped develop many investment justification projects, including the Terrorism Early Warning System (TEWS). The newly elected Sheriff reorganized the Washoe County Sheriff's office and discontinued the Homeland Security Director position that exists at the Assistant Sheriff level. Therefore, Mr. Lopey decided to retire from the Sheriff's office no later than March 1, 2007. However, his retirement would have no bearing on his participation with the TEWS, Statewatch or other Homeland Security projects.

Upon learning of Mr. Lopey's retirement, Las Vegas Metro offered him employment as a TEWS and Statewatch Director on an independent contractor basis. Mr. Lopey informed his agency's District Attorney, Nate Edwards, about his employment plans with Metro, and was advised by Mr. Edwards to postpone his employment plans, and seek an opinion from the Nevada Commission on Ethics.

Mr. Lopey then provided testimony. Following testimony and deliberations, Commissioner Hsu moved that the Commission find that the provisions of NRS 281.236(3) do not apply to Mr. Lopey and that he may pursue his endeavors after retirement accordingly. Commissioner Jenkins seconded the motion. Commissioner Hutchison expressed concerns about whether Washoe County, the Sheriff's Department, or the State Homeland Security Commission are part of the executive branch. Commissioner Hsu clarified that Mr. Lopey will be a former employee of the Sheriff's office, and there is no evidence that the Sheriff's office promulgates regulations governing the activities of CIO Collaborative, the private contractor through which Mr. Lopey will be contracted. He also stated that Washoe County Commissioners do not regulate Homeland Security, and Mr. Lopey was not employed by the State Homeland Security and, therefore, based on the facts presented, he is satisfied that the statute does not apply.

After further discussions, the motion was put to a vote and failed 3-4 with Commissioners Jenkins, Hsu, and Kosinski voting aye, and Commissioners Keele, Capurro, Flangas, and Hutchison voting nay.

Chairman Kosinski stated that the motion was disturbing to him because the Commission's duty is to either make the initial threshold determination as to whether or not Mr. Lopey comes within the provisions of 281.236 subsection (3), and if we find he doesn't it would end their inquiry. However, if he does, then they should look to the provisions of subsection (4) to see if the Commission can grant an exception. Commissioner Jenkins stated that this is why many of the motions of the Commission start with the language "based on the information provided..." because the Commission does not know CIO's relationship with Washoe County, or CIO's status as a regulated industry since that information is not before them, therefore, the Commission's advice to Mr. Lopey would be limited to the information that is before them. Commissioner Keele commented that, by inference and everything that "we know" about the Department of Homeland Security and its revenue sharing activities with law enforcement partners, including Las Vegas Metro and the Washoe County Sheriff's office, he believes there are regulations in place at those two entities that govern the activities of CIO Collaborative.

After further discussions, Commissioner Hsu moved that, based on the evidence presented before the Commission, that the Commission cannot determine whether NRS 281.236 subsection (3) applies, but even if it did apply, the Commission find that Mr. Lopey be relieved from those provisions under subsection (4) of NRS 281.236. He further moved that the Commission specifically make the findings that Mr. Lopey's employment is not contrary to the best interests of the public, the continued integrity of state government and the code of ethical standards prescribed in NRS 281.481. Vice Chairman Hutchison seconded the motion. The motion was put to a vote and passed 5-2 with Commissioners Jenkins, Hsu, Keele, Capurro and Hutchison voting aye, and Commissioners Flangas and Kosinski voting nay.

Chairman Kosinski closed this agenda item.

A ten-minute recess was taken at 11:21 a.m.

Agenda Item 6 – Open session for discussion and possible adoption of criteria to be used for future evaluations of the job performance of the executive director.

Chairman Kosinski opened the agenda item to consider, deliberate and adopt a set of criteria, which will be used in the future to evaluate the performance of the executive director. Chairman Kosinski advised the Commission that the Subcommittee decided to have the executive director provide a quarterly update of the information provided in the Executive Director's Annual Report particularly, the opinion caseload and educational programs. With this information, the Subcommittee recommends a quarterly evaluation process using the criteria adopted during this meeting, and would give the Commission an opportunity to review those items such as the number of complaints received, number of complaints processed, and number of complaints remaining unprocessed.

Commissioner Jenkins recommended a few grammatical corrections be made to the job description. Commissioner Cashman questioned if the executive director would be evaluated as to how well he fulfills the specific duties and responsibilities under the job description criteria before the Commission. Chairman Kosinski confirmed that is correct. He also stated that a purpose of the process is to see where staff resources should be refocused or if additional staff is needed. Discussion was also made about the order of importance of each duty. Commissioner Jenkins stated that she did not feel it was necessary to prioritize the duties since the entire intent was to flush out expectations of the Executive Director, and to get them recorded so that the individual would know what the Commission expects of them. She further stated that the executive director is an unclassified employee, so the Commission does not need to only use these identified criteria in the hiring, firing, or evaluation process.

Commissioner Cashman requested a change to the language of item 11, stating that there are a number of ways to manage people and some ways are more effective than others. Therefore, it is important to include “effectively” manage staff, to send a message that they expect their employees to be managed in a competent, progressive manner or treated fairly.

The Commission agreed to add item 18, to maintain and regularly update the web site and other public information tools.

With regards to items 15 and 16, making recommendations to the Commission to develop the Commission’s legislative positions, coordinate lobbying efforts and administrative and legislative reform, Commissioner Keele expressed concern regarding discussions the Commission has had in the past and that he believes discussions were not properly noted at the time they were raised, where the Commission wanted to touch base on them when it was time for the next legislative session, but those items have slipped through the cracks. Commissioner Keele said he would like to include “Maintain a list of ideas and concerns expressed by Commissioners about prospective amendments to the provisions of Chapter 281 of NRS.” He recommended that item 15 read “Make recommendations to the Commission, including comments made by Commissioners at hearings, regarding potential administrative and legislative reforms.”

Commissioner Jenkins moved adoption of the materials behind Tab 6 as amended, to be the overview of the duties and responsibilities of the Executive Director of the Nevada Commission on Ethics. Commissioner Hsu seconded the motion. The motion was put to a vote and passed unanimously.

Agenda Item 7 – Open session for update by the executive director and possible discussion of upcoming 2007 legislative session.

Chairman Kosinski opened this agenda item. Pat Hearn explained that he wanted to bring this back to the Commission because he was not here when they last discussed the legislative proposals in May, and he wants to make sure their priorities have not changed. He then proceeded to offer his own thoughts. He stated that he would be meeting on February 6, with the Senate Finance Committee and the Senate Judiciary Committee. He will be meeting with

Senator Amodei to review various issues relating to due process, and to understand how the new regulations adopted by the Commission will help ensure that inappropriate ex parte contacts and comments will not be made by Commission members and staff. Mr. Hearn requested guidance from the Commission since he has no past history in this. Commissioner Hsu provided a genesis, and stated that he was summoned by Senator Amodei to talk about due process. He then advised Pat to go through the most recent changes and emphasize the fact that we have now banned ex parte communications by any staff and commissioners about any matter which might come before the commission. Commissioner Hsu also stated that he would send Pat his notes that he prepared for his meeting with Senator Amodei to talk about existing laws and regulations relating to due process. But looking at what the Commission has done since then, he advised that Pat look at the regulations and especially ex parte language and show that the Commission has responded to Senator Amodei's concerns.

Mr. Hearn then asked to review the intent and justification chart, which summarizes the proposed legislative amendments and reasons for it. He expressed that if the Commission initiates something on its own motion and then makes the find of a violation, that there is an unseemly appearance relating to due process. Although he feels the Commission has used its own motion authority very judiciously, Mr. Hearn suggested that the Commission leave this one alone since it has not caused problems for the Commission. Chairman Kosinski agreed stating that if the Commission were to lose its authority with this one, they would never get it back. Commissioner Keele agreed that the Commission has been particularly conservative with respect to the use of that power, and if authority is ever yielded or ceded, that it would be difficult for this Commission to reacquire that authority. Chairman Kosinski then clarified that NRS 281.511 subsection (2), paragraph (c), should remain as it currently reads, and no changes will be made.

Pat Hearn suggested that he would like to prepare a list of items that could use some cleanup language, and he would like to present the list to the Commission for approval, in hopes to include the amendments in a bill. Chairman Kosinski agreed with this plan, and Mr. Hearn stated he would try to get this list to Commissioners the following week.

Commissioner Jenkins expressed concerns that Pat may not be adequately prepared to meet with Senator Amodei or discuss the agency budget with Senate Finance just from reading previous transcripts. She recommended that for any legislative hearings that may be coming up, that it would be helpful for the Executive Director to have the chairman or another member of the commission with him to show solidarity, that the executive director is not acting alone, and because of Pat's brief tenure, it would be helpful to have a little history sitting with him. Chairman Kosinski stated that he intends to attend all meetings when he is in town, otherwise, he will contact another member to attend. Commissioner Cashman requested that Pat send an e-mail out to all Commissioners of any hearings that he's aware of in advance.

Agenda Item 8 – Open session for public comment

Chairman Kosinski opened the agenda item for public comment. Commissioner Flangas requested that information he provided to the executive director be sent via e-mail to all Commissioners for review. Chairman Kosinski said that, if possible, the item would be placed

on the next agenda for discussion. No other public comment was made, and the agenda item was closed.

Chairman Kosinski adjourned the meeting at 12:42 p.m.

Minutes transcribed by:

Minutes approved March 14, 2007

Emily H. Nunez, Office Manager

Jim Kosinski, Chairman